



FWH:SRM:DLKaplan

U.S. Department of Justice
Civil Division, Appellate Staff
601 D Street, N.W. Room 9539
Washington, D.C. 20530-0001

RECEIVED

OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Tel: (202) 514-5083

Fax: (202) 514-7964

October 13, 1998

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: **EX PARTE PRESENTATION**
In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213

Dear Ms. Salas:

On October 9, 1998, representatives of the Department of Justice, Federal Bureau of Investigation, and Booz-Allen & Hamilton ("the Department") met with a representative of the Federal Communications Commission ("the Commission") to discuss the above-referenced matter. Present from the Department of Justice were Daniel L. Kaplan, Scott R. McIntosh, Jonathan D. Schwartz, and Patricia Small. Present from the Federal Bureau of Investigation were Michael Gallagher and Dave Yarbrough. Present from Booz-Allen & Hamilton were Henry Hodor and Michael McMenamin. Present from the Commission was Paul Misener.

The subject of this meeting was the merits of the positions taken by the Department in previous filings regarding the proper scope and substance of the rule the Commission will issue in connection with the Communications Assistance for Law Enforcement Act. Specifically, the parties discussed the "punch-list" capabilities which the Department maintains are required by the Act. The Department also distributed a set of illustrative handouts, which are attached to this letter.

Pursuant to Section 1.1206 of the Commission's Rules, we have enclosed the original and one copy of this letter. We are simultaneously providing a copy of this letter to Mr. Misener.

Very truly yours,

Daniel L. Kaplan

Daniel L. Kaplan
Attorney, Appellate Staff

Attachment

cc: Paul Misener

No. of Copies rec'd 0+1
List ABCDE

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

ASSISTANCE CAPABILITY PRESENTATION

October 9, 1998

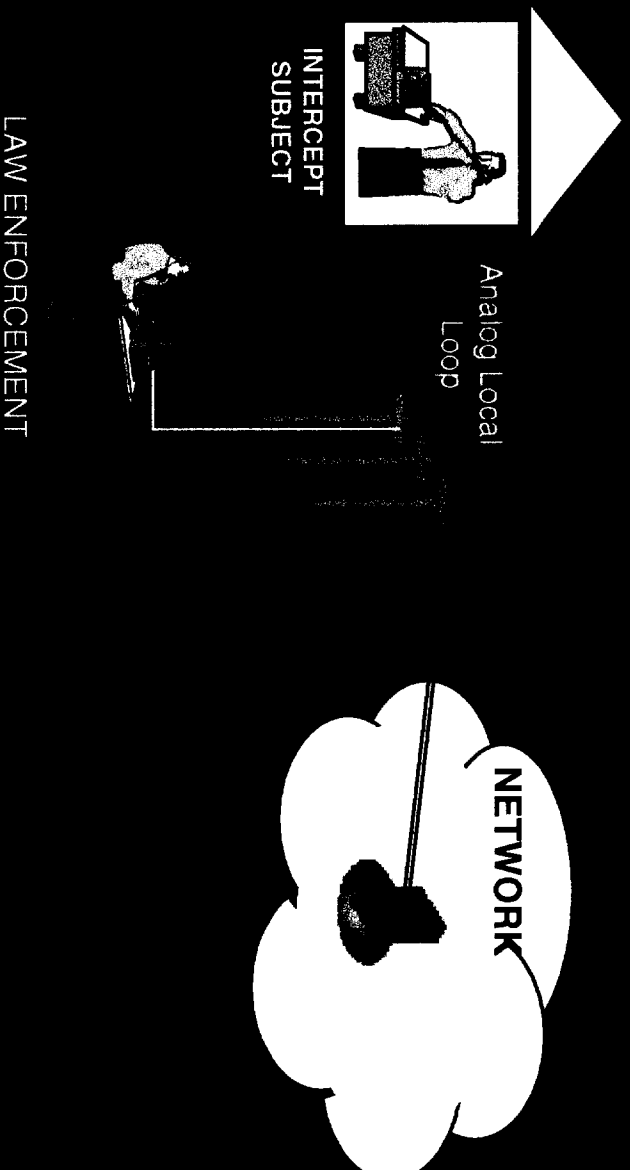
TITLE III INTERCEPTS

- Courts may issue orders "authorizing or approving the interception" of wire, electronic, or oral communications by federal and state law enforcement officers. (18 U.S.C. § 2516)
- Law enforcement must show probable cause that "the **facilities**" from which the communications are to be intercepted "are being used" in connection with the commission of a specified offense or "are leased to, listed in the name of, or commonly used by" a person involved in the offense. (18 U.S.C. § 2518(d))
- Law enforcement must show that "**normal investigative procedures** have been tried and have **failed** or reasonably appear to be unlikely to succeed if tried or to be too **dangerous**." (18 U.S.C. § 2518(3)(c))
- Interception order specifies "the nature and location of the communications **facilities**" as to which interception authority is granted (18 U.S.C. § 2518(4)(b))
- Title III intercept authority is **not** limited to communications involving the subscriber or named subjects. United States v. Kahn, 415 U.S. 143, 150-58 (1974).

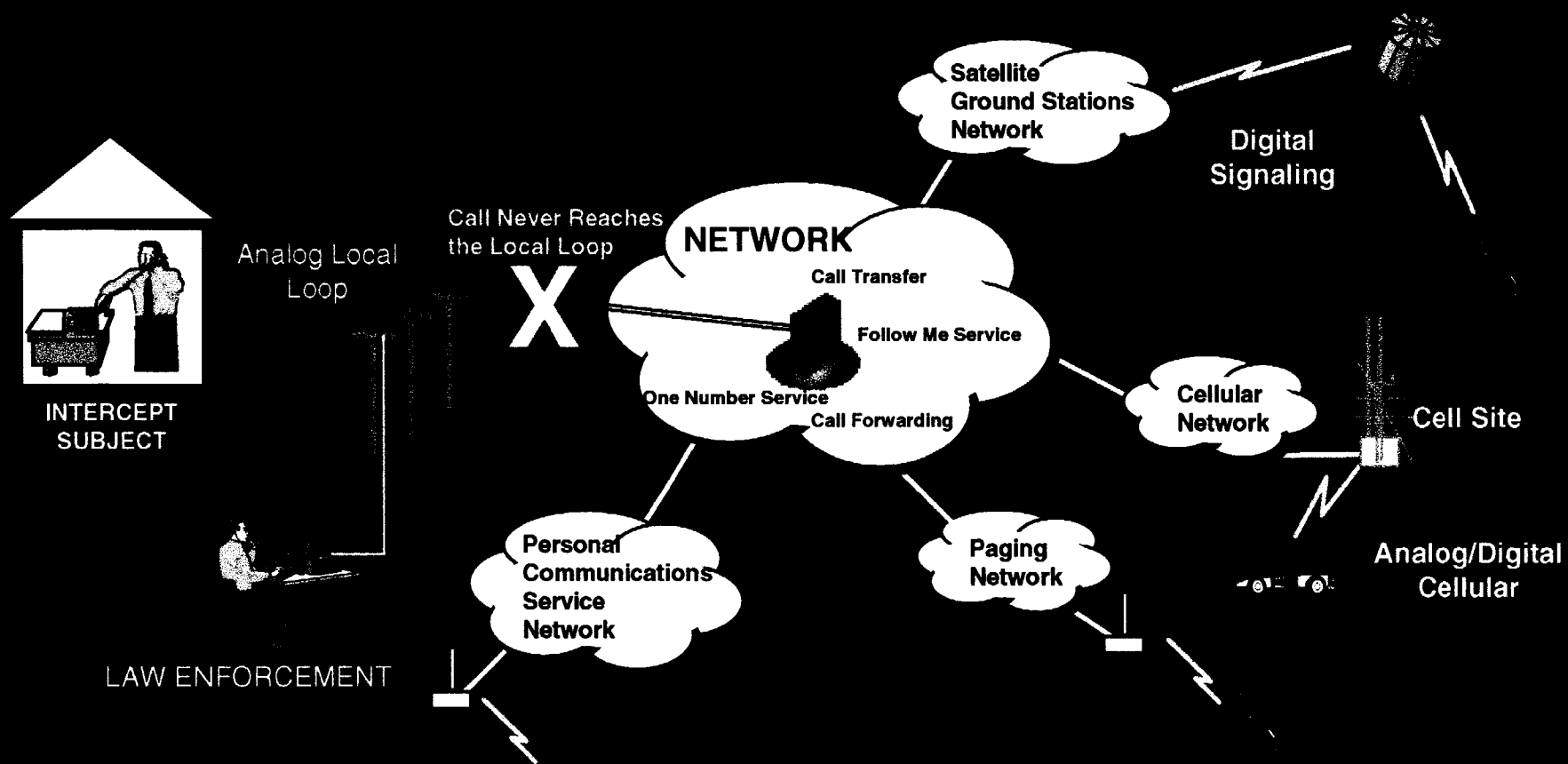
PEN REGISTERS AND TRAP-AND-TRACE DEVICES

- Courts "shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device" when law enforcement certifies that "the information likely to be obtained * * * is relevant to an ongoing criminal investigation." (18 U.S.C. § 3123(a))
- Law enforcement must use "reasonably available" technology (if any) that that limits recording or decoding of electronic or other impulses to "the dialing and signaling information utilized in call processing." (18 U.S.C. § 3121(c)) (added by CAL EA § 207)

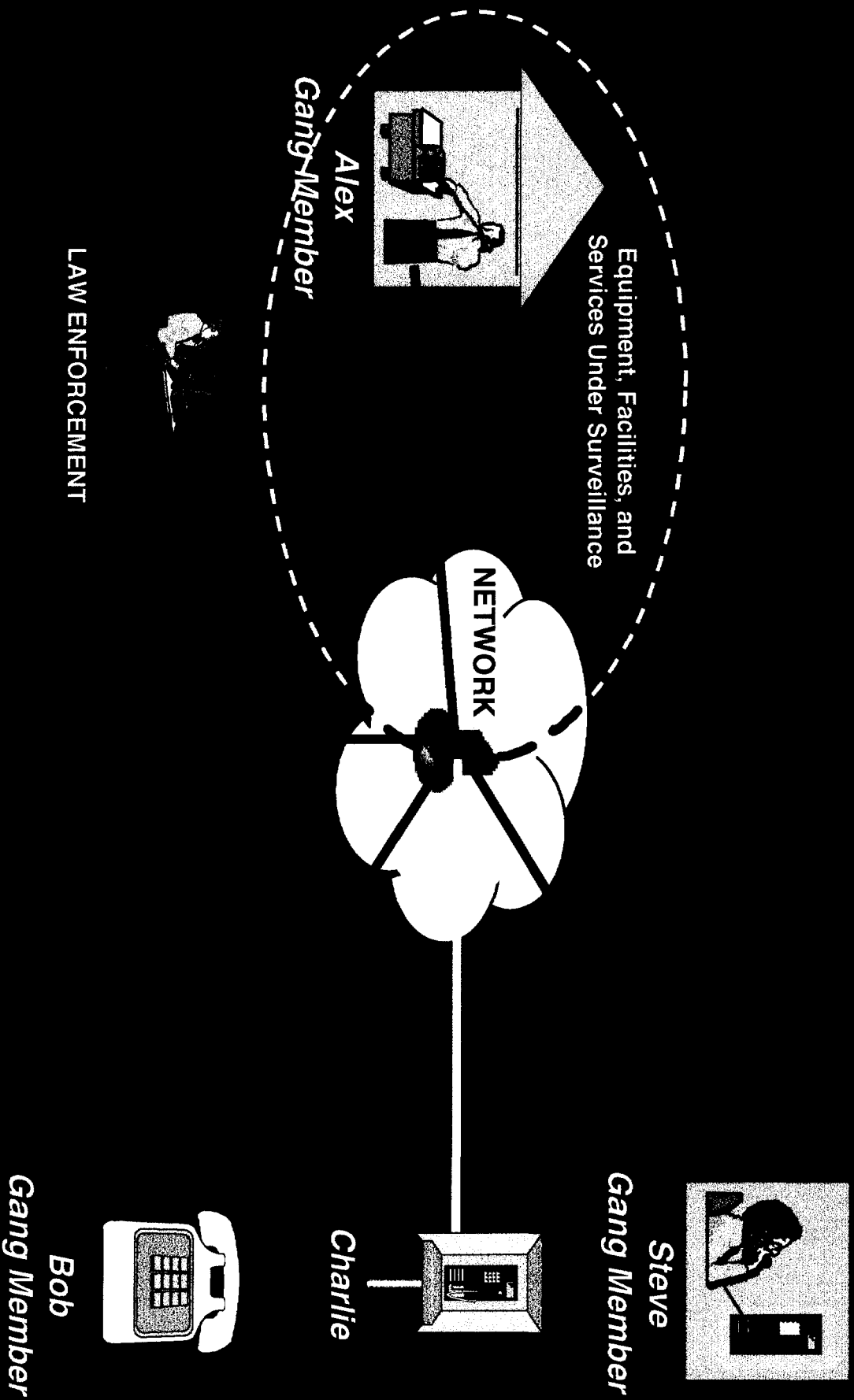
**AS TECHNOLOGY HAS CHANGED, LAW ENFORCEMENT'S ABILITY
TO CARRY OUT AUTHORIZED ELECTRONIC SURVEILLANCE HAS
STEADILY DIMINISHED**



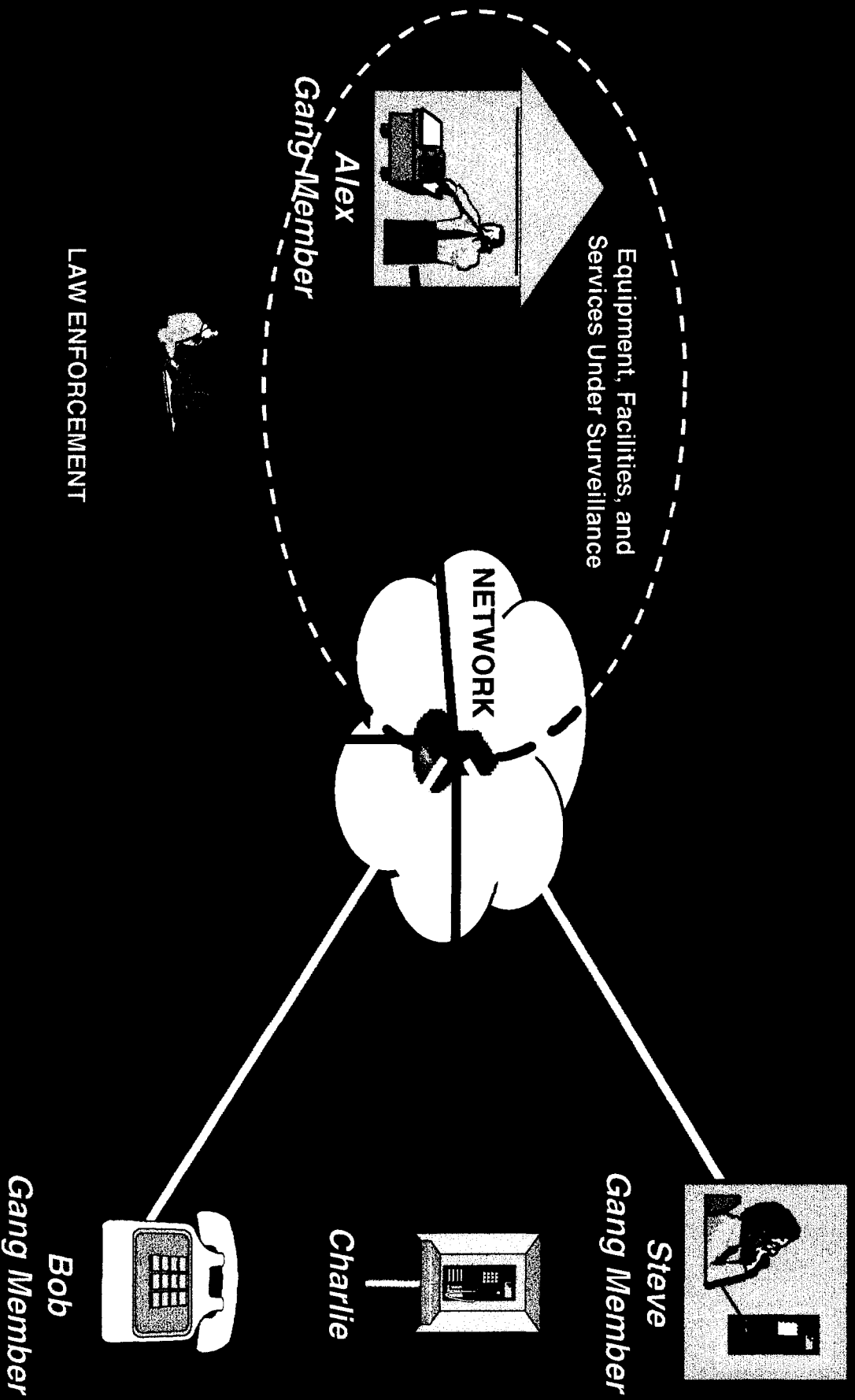
AS TECHNOLOGY HAS CHANGED, LAW ENFORCEMENT'S ABILITY TO CARRY OUT AUTHORIZED ELECTRONIC SURVEILLANCE HAS STEADILY DIMINISHED



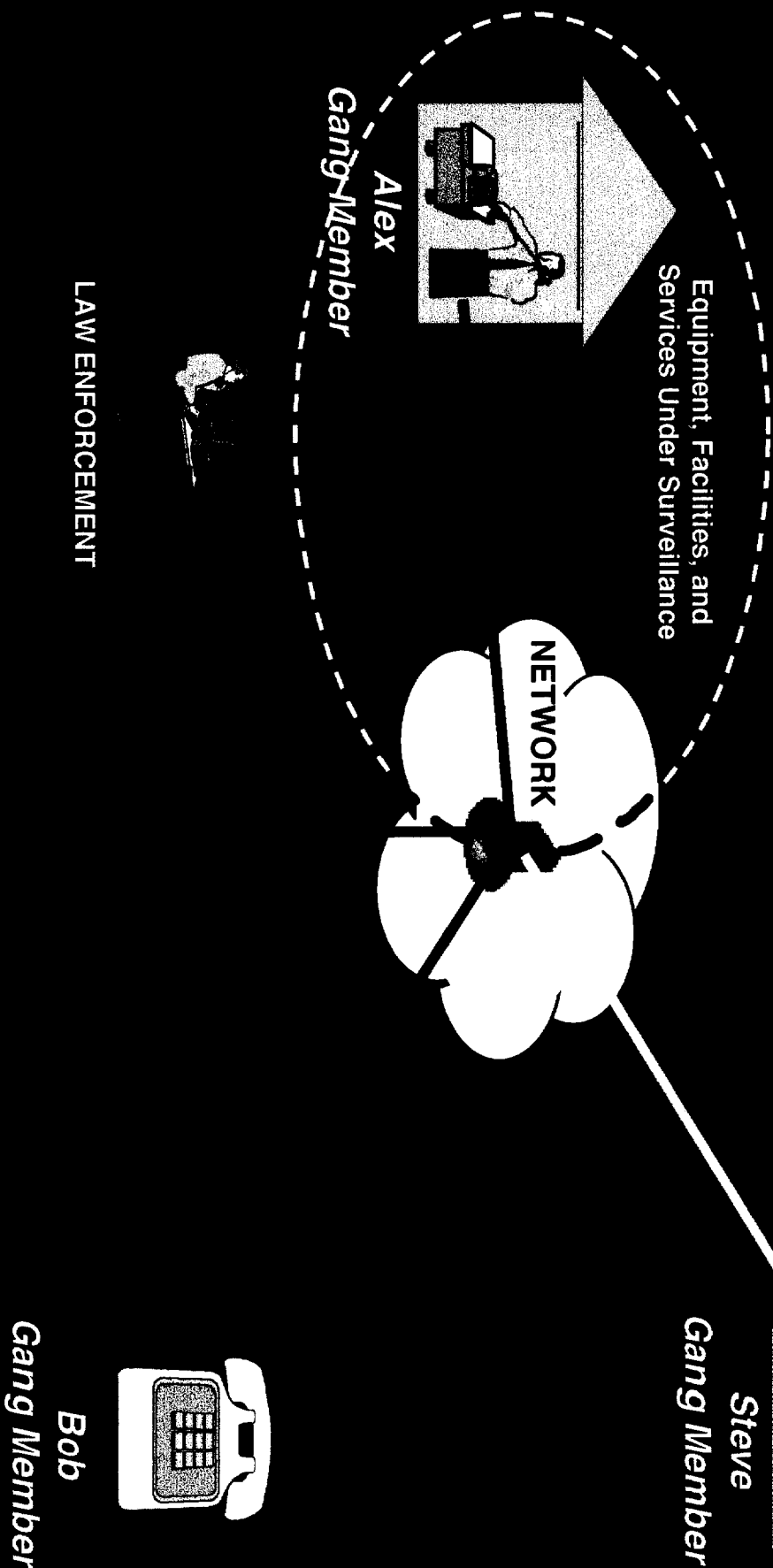
MULTIPARTY CALL SCENARIO



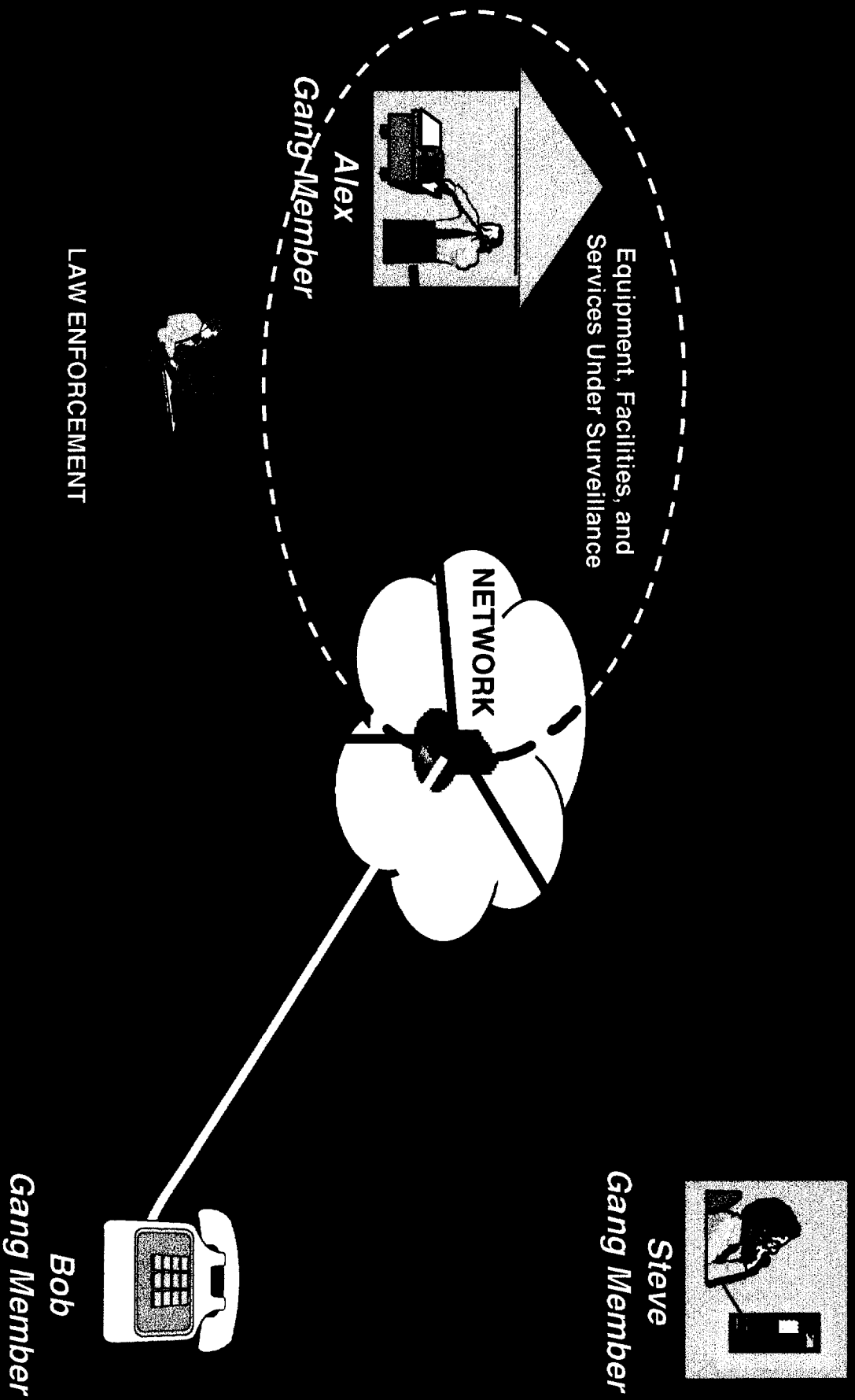
MULTIPARTY CALL SCENARIO



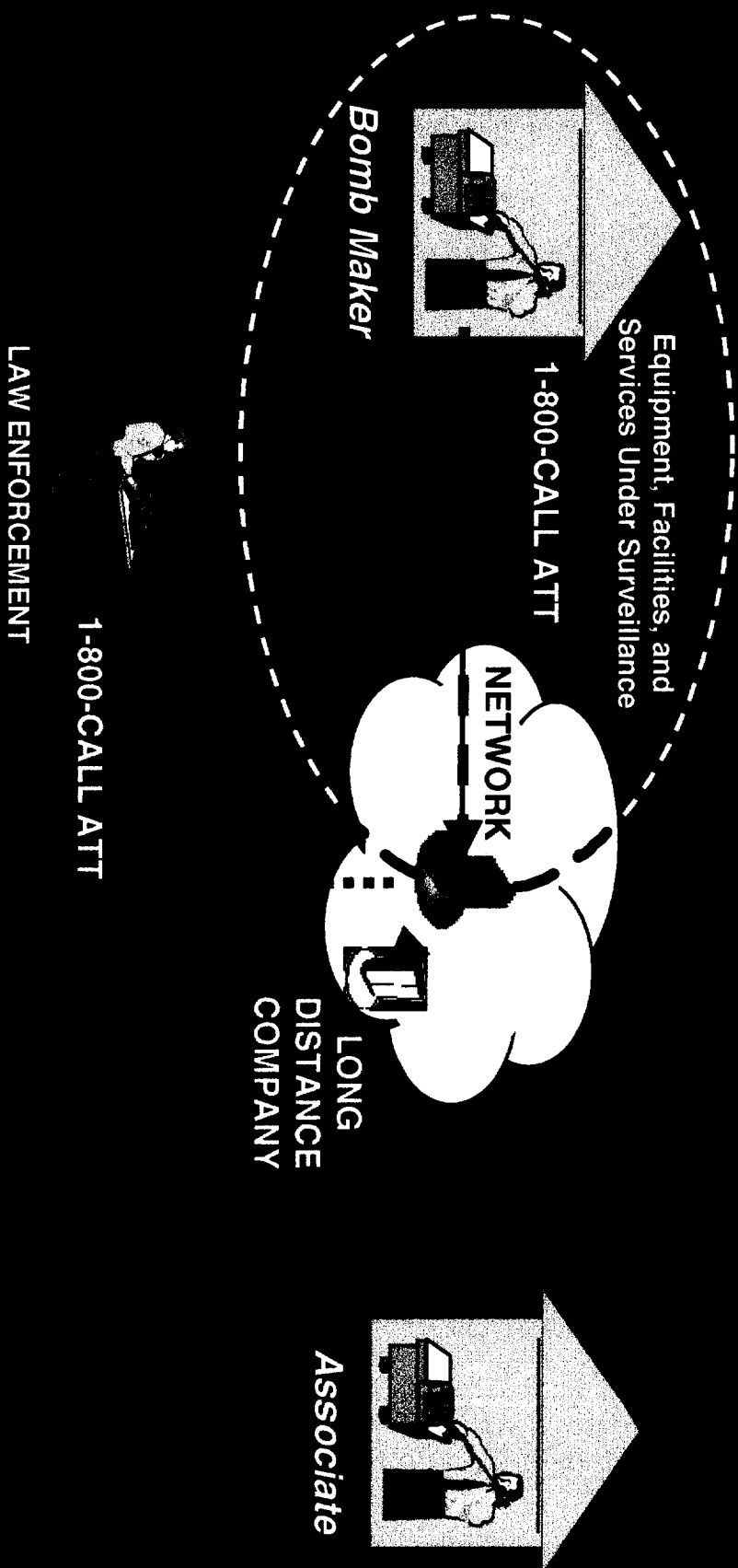
MULTIPARTY CALL SCENARIO



MULTIPARTY CALL SCENARIO



POST-CUT-THROUGH DIALED DIGIT SCENARIO



Equipment, Facilities, and
Services Under Surveillance

Bomb Maker

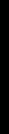
1-800-CALL ATT
213-555-1212

NETWORK

**LONG
DISTANCE
COMPANY**

Associate

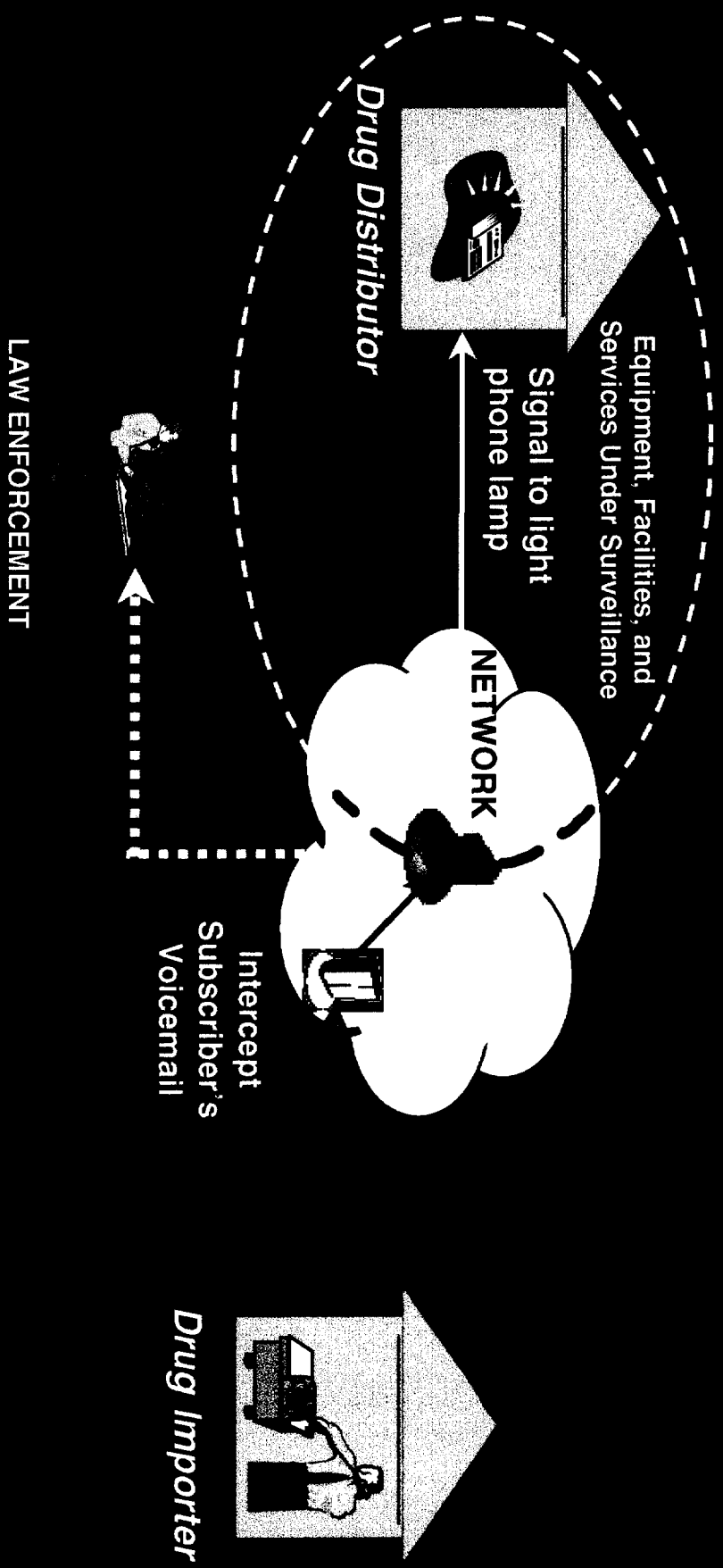
213-555-1212



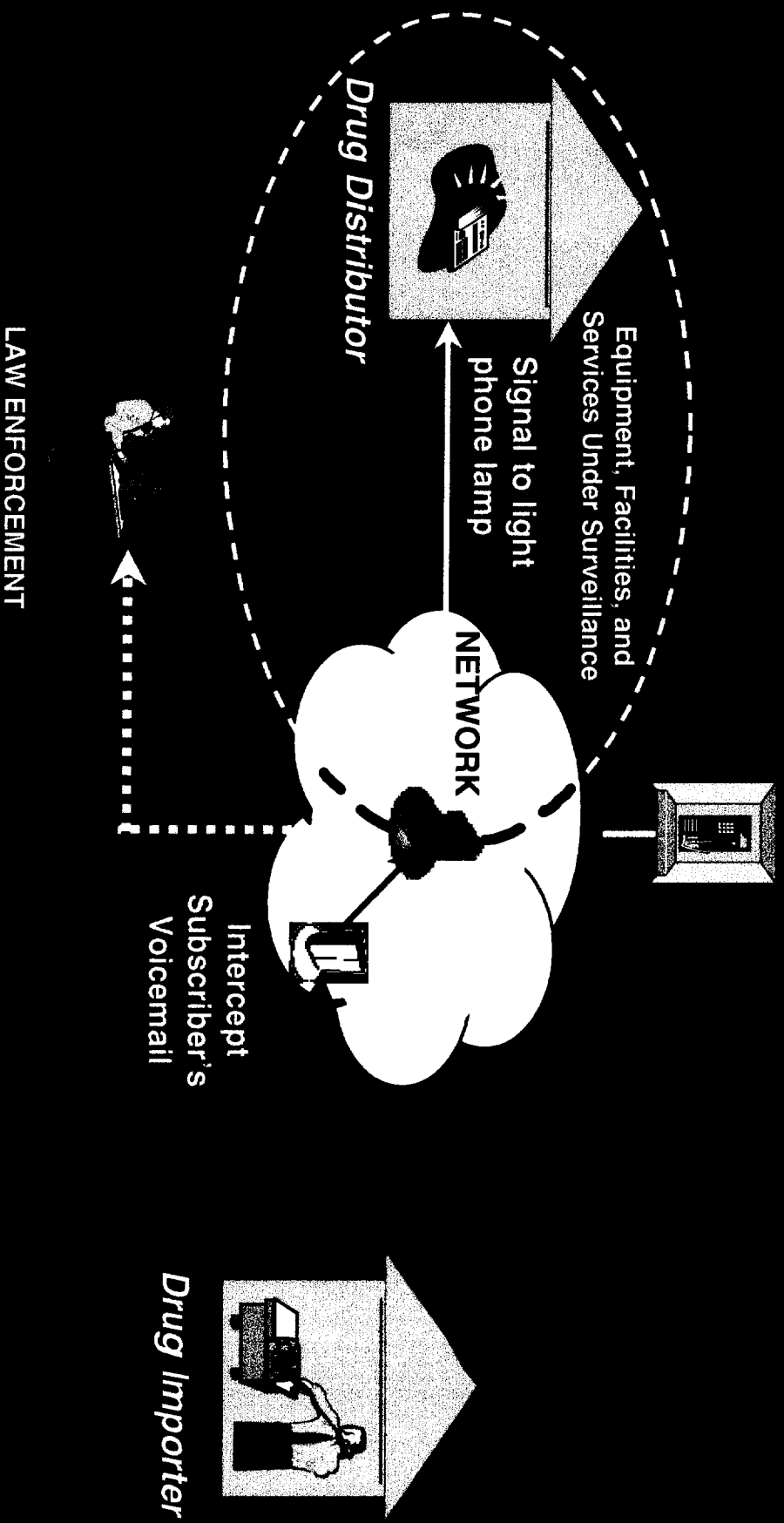
1-800-CALL ATT

Associate
213-555-1212

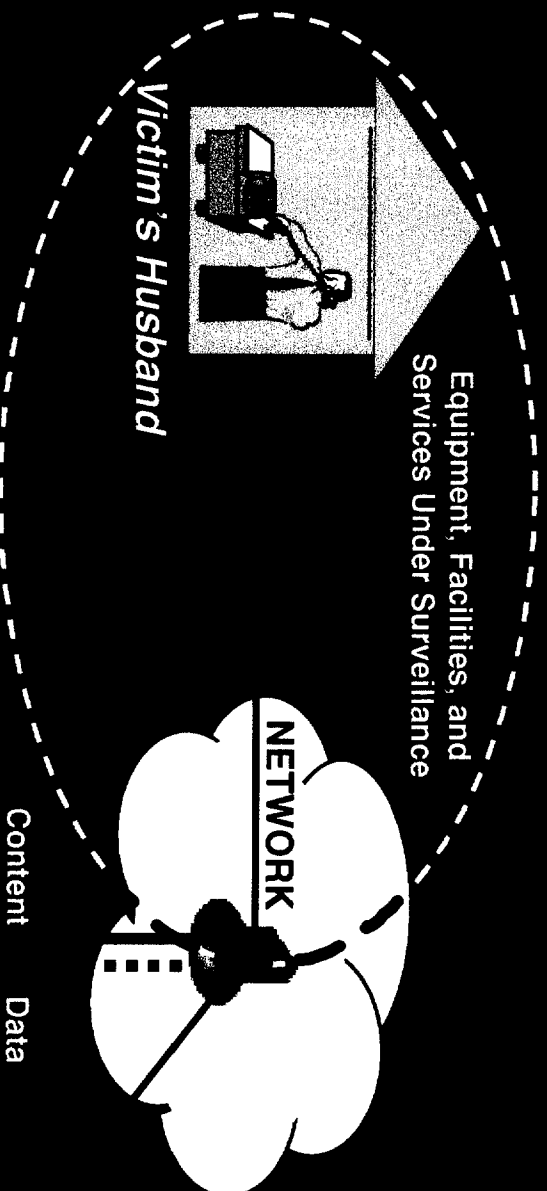
NOTIFICATION MESSAGE SCENARIO



NOTIFICATION MESSAGE SCENARIO



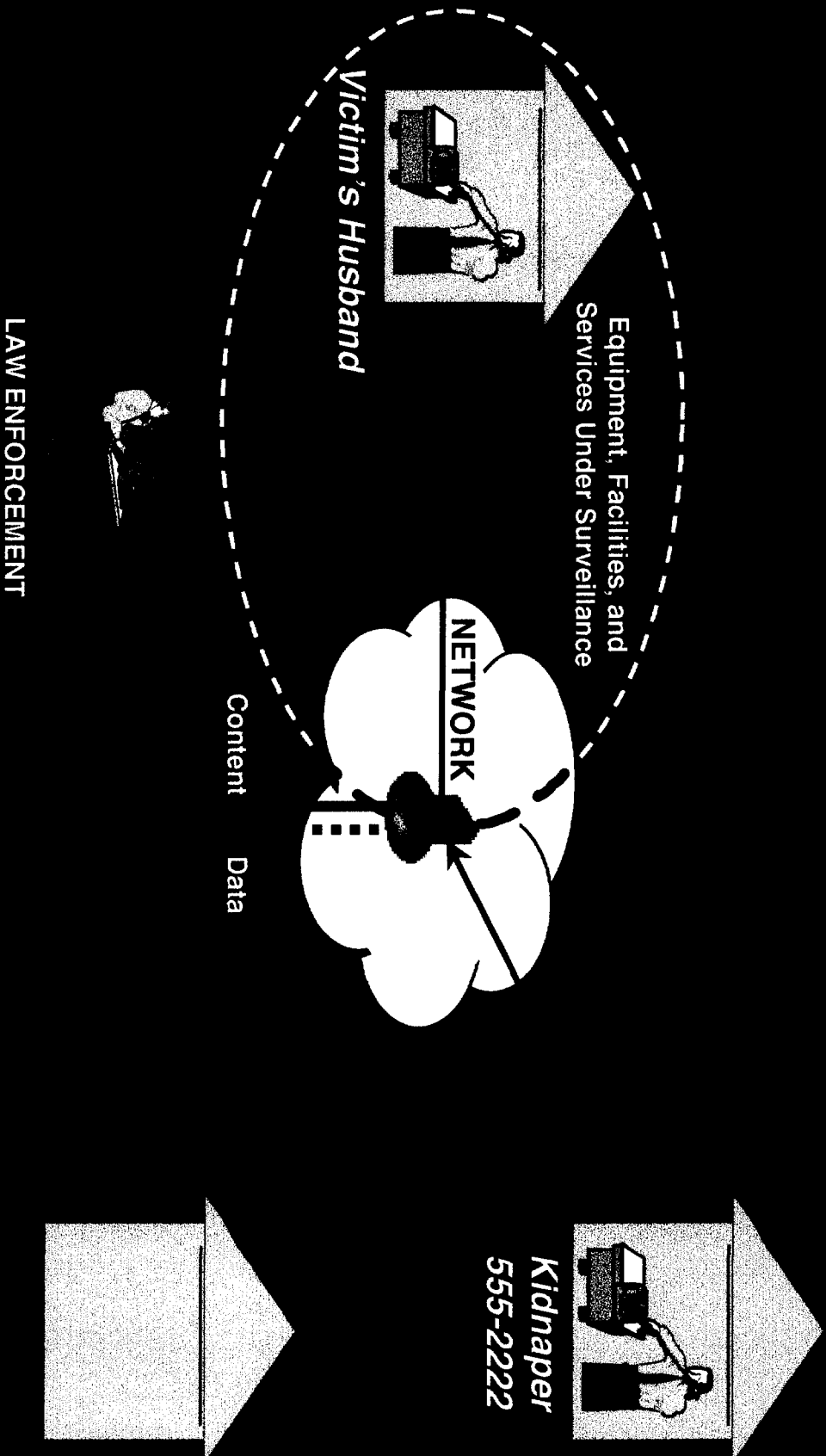
TIMELY DELIVERY SCENARIO



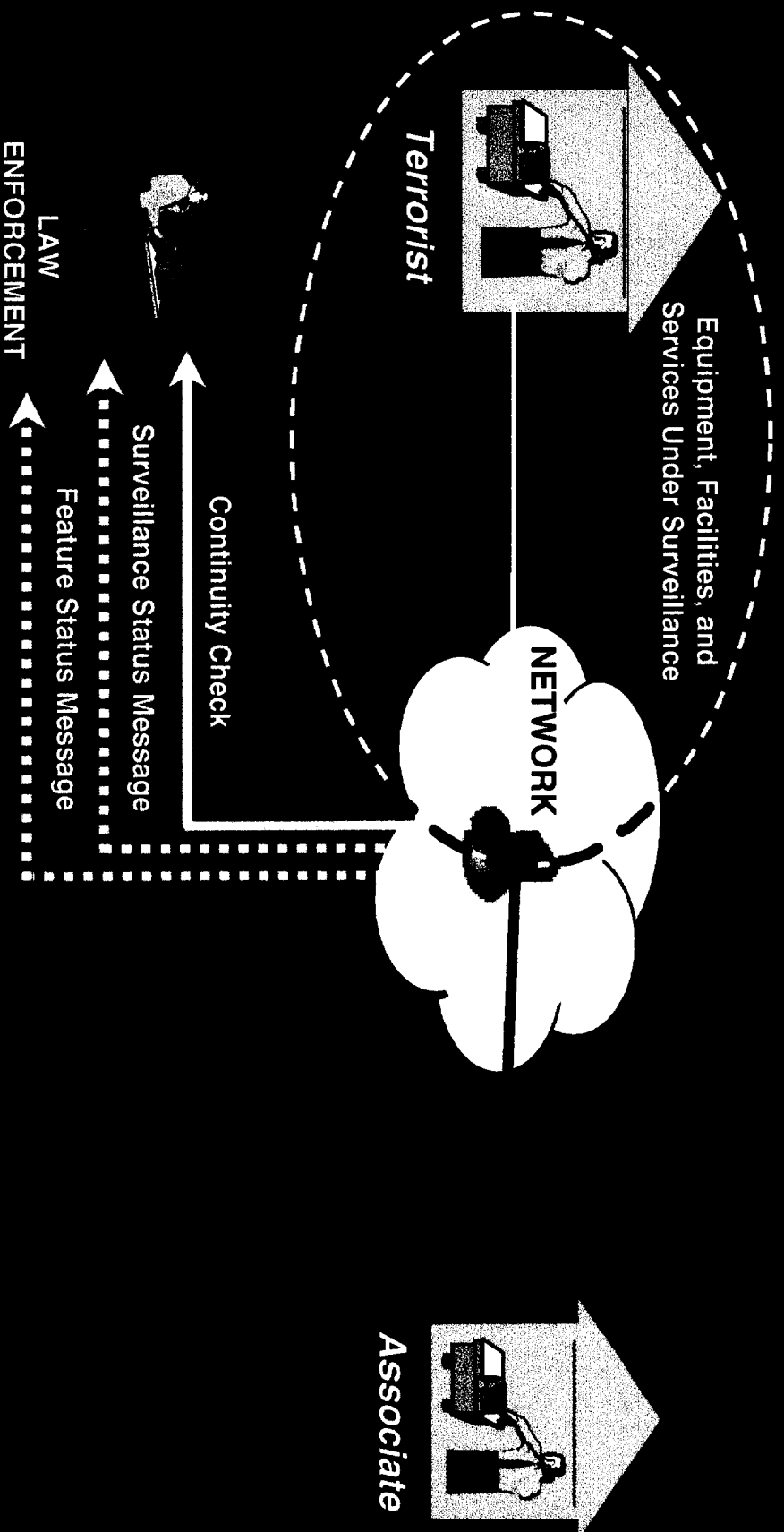
LAW ENFORCEMENT

Kidnap
555-1111

TIMELY DELIVERY SCENARIO



SURVEILLANCE INTEGRITY SCENARIO



CALEA PRESERVES LAW ENFORCEMENT'S ABILITY TO CONDUCT
LAWFULLY AUTHORIZED ELECTRONIC SURVEILLANCE WHILE
ACCOMMODATING THE PUBLIC INTEREST IN PRIVACY AND
INDUSTRY'S ABILITY TO OFFER NEW TECHNOLOGIES AND
SERVICES

THE J-STANDARD FAILS TO SATISFY THE SPECIFIC ASSISTANCE
CAPABILITY REQUIREMENTS OF SECTION 103 OF CALEA